

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Vermont Health Access (the "State") and OptumInsight, Inc., with a principal place of business in Eden Prairie, Minnesota, (the "Contractor") that the contract between them originally dated as of August 15, 2016, Contract #31750, as amended to date, (the "Contract") is hereby amended effective November 20, 2020 ("Amendment No. 4") as follows:

I. **Maximum Amount.** The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$68,755,223.00 to \$68,970,223.00, representing an increase of \$215,000.00.

II. **Attachment A, Specifications of Work to be Performed.**

i. Attachment A, Section 1 is hereby deleted in its entirety and replaced as set forth below:

**1. THE CONTACTS FOR THIS CONTRACT ARE AS FOLLOWS:**

	<b>State Fiscal Manager</b>	<b>Authorized State Representative</b>	<b>For the Contractor</b>
<b>Name:</b>	Meaghan Kelley	Darin Prail	Scott Cerreta
<b>Phone:</b>	(802) 241-0393	(802) 338-5719	(802) 654-0206
<b>E-Mail:</b>	<a href="mailto:Meaghan.Kelley@vermont.gov">Meaghan.Kelley@vermont.gov</a>	<a href="mailto:Darin.Prail@vermont.gov">Darin.Prail@vermont.gov</a>	<a href="mailto:Scott.Cerreta@optum.com">Scott.Cerreta@optum.com</a>
	<b>DVHA Contract Owner</b>		
<b>Name:</b>	Molly Sweeney		
<b>Phone:</b>	(802) 798-2240		
<b>E-Mail:</b>	<a href="mailto:Molly.Sweeney@vermont.gov">Molly.Sweeney@vermont.gov</a>		

ii. Attachment A, Section 26 is hereby deleted in its entirety and replaced as set forth below:

**26. PREMIUM PROCESSING DEVELOPMENT**

Contractor shall support the State's development of end-to-end integration functionality for transition of Qualified Health Plan (QHP) premium processing to insurance carriers for coverage year 2022. Effective March 1, 2020, Contractor shall begin to perform the services described in this amendment on a time and material basis. These time and material services will be performed as requested and under the direction of the State up to a maximum of \$915,000.00, or until August 14, 2021, whichever occurs first.

On March 25, 2020 the State notified Contractor that the Premium Processing project implementation would be postponed from 2020 to 2021 in support of plan year 2022 instead of plan year 2021 due to State resource availability and the evolving COVID-19 pandemic. At the State's direction, Contractor has continued work uninterrupted at a

reduced pace since the March 25, 2020 communication. In collaboration with the State, Contractor distributed both in-flight and planned workstream timelines that extend through the remainder of the project timeline to deliver a high quality, robust solution and allow for thorough operational readiness planning.

The Contractor and the State completed premium processing software requirement creation and approval between December 2019 and July 2020, which the Contractor used to develop associated functionality. The State subsequently re-wrote the approved software requirements to adhere with best practices for CMS traceability. The Contractor will use the originally approved requirements when performing System Integration Testing (SIT) and the State will use the rewritten requirements to perform User Acceptance Testing (UAT). To reduce project risk associated with these two different sets of requirements, Amendment No. 4 adds scope for the Contractor to review and analyze differences between the two sets of requirements, and it adds new State responsibilities to support this effort. The Application Lifecycle Management (ALM) tool will serve as the sole system of record for requirement analysis.

## **26.1 In-Scope**

Contractor shall:

- a) Participate in requirement identification, analysis, and functional design pertaining to the future-state functionality for QHP premium processing through electronic data interchange (EDI) transactions;
- b) Participate in the definition of the technical solution and detailed system requirements for integrating Vermont Health Connect (VHC) with insurance carriers through EDI transactions for QHP premium processing;
- c) Provide development support for the VHC transition of QHP premium processing to insurance carriers from WEX Health, including the following activities:
  - i. Decoupling of WEX pay pages for QHP customers;
  - ii. Re-direction of QHP customers to carrier pay pages;
  - iii. Decoupling enrollment integration logic into multiple parts;
  - iv. Updating business workflows for QHP and Mixed Households, and maintaining Medicaid workflows;
  - v. Updates to VHC system jobs and system workflows;
  - vi. Updates to WEX Health payment artifacts and relevant triggering points in current business workflows;
  - vii. Re-alignment of reconciliation process for carrier data;
  - viii. Creation of new interfaces and updates to existing interfaces with proper error handling;
  - ix. Payment process changes for Vermont Premium Assistance (VPA) and Vermont Cost Share Reduction (VCSR) and associated Siebel, service-oriented architecture (SOA) and the enrollment change engine modifications;
  - x. Carrier initiated non-payment terminations and reinstatements protocols; and

- xi. Business logic and integrations for legacy QHP and mixed household balances owed.
- d) Provide Quality Assurance (QA) support for test case definition and execution related to user/system functionality and external integration points;
- e) Ensure existing Medicaid billing processes are not impacted by changes to QHP and that Medicaid functional and business flows remain unchanged;
- f) Attend weekly status meetings and provide weekly status reports detailing planned activities, tasks, start/finish dates;
- g) Provide labor reports no less than every other week on the total hours expended per resource by week including resource billing role and rate;
- h) Adhere to the Quality Assurance Surveillance Plan (QASP) (Amendment No. 4 Exhibit 1), to include project management work practices, code delivery, and acceptance:
  - i. Upon the State's written approval, the Contractor shall be made exempt from a QASP related activity provided the exemption is approved by the Department of Vermont Health Access (DVHA) Product Owner and DVHA Contract Owner;
  - ii. Contractor shall adhere to all Contractor Deliverables noted in Amendment No. 4 Exhibit 1, however, the Secure deliverable is not tied to State's acceptance for Premium Processing Development;
- i) Participate in generating diagram mapping of user workflows;
- j) Participate in generating diagram mapping of system infrastructures including but not limited to updates to the Software Development Life Cycle (SDLC) document;
- k) Provide integration updates required with WEX Health; and
- l) Participate in performance testing as mutually agreed by the State and Contractor.
- m) Perform a one-time analysis of the 178 re-written requirements provided by State including:
  - i. Review of re-written requirements for clarity, consistency, and completeness;
  - ii. Perform gap analysis against the original requirements to identify if the re-written requirements represent new functionality or present changes to the baseline functionality; and
  - iii. Analyze mapping between re-written requirement and originally approved requirements.
- n) Build an automated Requirements Traceability Matrix (RTM) report that can be executed by both SIT and UAT teams based on the ALM folder selected for the data source and extracts requirement documentation from ALM and populates it into a Microsoft Excel file according to a specification template provided by State.

## 26.2 Out of Scope

The following items and anything not expressly stated in Section 26.1 above are out-of-scope:

- a) Triage of Incidents, Defects, or Problems within the State's infrastructure
- b) Training materials beyond what is needed for User Acceptance Testing
- c) As a result of the one-time requirement gap analysis:

- i. Modifications to existing developed or approved features in re-written requirements and/or business rules; and
- ii. Gaps between the developed software solution and the previously approved software requirements will be considered defects and corrected as part of defect remediation efforts.

### **26.3 State Responsibilities**

As of September 10<sup>th</sup>, 2020, State has provided a first draft of each of the below pre-requisites for Contractor to perform its requirements analysis and RTM development in accordance with Section 26.1.m and n. If pre-requisites do not meet the descriptions below, there may be risk to the project and additional effort may be required by the Contractor to complete the analysis:

- a) Provide all re-written requirements in ALM, including all relevant support artifacts;
- b) Provide the re-written requirements, including business rules, structured via hierarchical relationships defined for each ALM requirement in the requirement traceability metadata, so that no many-to-many relationships are present;
- c) Provide a mapping of the re-written requirements back to the originally approved source ALM requirement number; and
- d) Provide complete specification requirements for the RTM report that includes the data elements needed, content, layout, sorting, formatting, and sample data examples sufficient for development.

During the Contractor's requirement analysis and RTM development and until final execution of the Premium Processing Certificate of Acceptance, the State shall:

- a) Facilitate and execute updates to the re-written ALM requirements based on Contractor's analysis to correct errors and omissions identified by Contractor's gap analysis, as mutually agreed upon by the State Product Owner and Contractor;
- b) Update, formalize, and submit RTM to CMS;
- c) Maintain records of the mapping from the re-written requirements, including business rules, back to the originally approved source ALM numbers; and
- d) Not modify the originally approved or re-written requirements further unless it is mutually agreed to by the State Product Owner and Contractor.

### **III. Attachment B, Payment Provisions.** The payment provisions are amended as follows:

- i. Section 9 of Attachment B is hereby deleted in its entirety and replaced as set forth below:
9. HSEP M&O SERVICES - Contractor shall be paid for HSEP M&O Services based on the following fees:



Services	Fee
Core M&O Services: August 15, 2016 – August 14, 2018	\$21,437,500.00
Core M&O Services: August 15, 2018 – August 14, 2019	\$10,876,750.00
Core M&O Services: August 15, 2019 – August 14, 2020	\$10,669,500.00
Core M&O Services: August 15, 2020 – August 14, 2021	\$10,971,473.00
Discretionary Funds**	\$9,000,000.00
Key Deliverables*	\$5,100,000.00
Premium Processing Time and Materials Not to Exceed	\$915,000.00
Total Pricing Through August 14, 2021**	\$68,970,223.00

\*The total fee for Key Deliverables is comprised of the \$2,200,000.00 outlined in Table A, the \$1,100,000.00 outlined in Table A1, the \$1,800,000.00 outlined in Table A2.

\*\*See additional details in Section 9.2 in this Attachment B.

Should the State elect to proceed with option year August 15, 2021 through August 14, 2022 the following pricing will apply:

**Optional Term Pricing August 15, 2021 through August 14, 2022:**

Core M&O Services: August 15, 2021 – August 14, 2022 (if elected)	\$11,164,613.00
Discretionary Services Amount (July 1, 2021 – August 14, 2022)	\$1,500,000.00
Key Deliverables (August 15, 2021 – August 14, 2022)	\$900,000.00
Total Option Year Pricing if elected:	\$13,564,613.00

**9.1 Core M&O Services**

a. August 15, 2016 – August 14, 2018

The monthly payment due for Core M&O Services during this period represents 1/24<sup>th</sup> of the total fixed price Contract, less the \$2,200,000.00 fee associated with the Key Deliverables, said Core M&O monthly fee being payable in 24 monthly installments of \$893,229.17. For partial months, payments shall be proportional to the period of performance. Payment for Core M&O Services includes Non-Key Deliverables, Reports, and Transition Deliverables, which are not tied to an Incremental Payment Sum.

b. August 15, 2018 – August 14, 2019

The monthly payment due for Core M&O Services during this period represents 12 monthly installments of \$906,395.84. For partial months, payments shall be proportional to the period of performance. Payment for Core M&O Services includes Non-Key Deliverables, Reports, and Transition Deliverables, which are not tied to an Incremental Payment Sum.

c. August 15, 2019 – August 14, 2021

Core M&O Services during this period represent monthly installments of the amounts below. For partial months, payments shall be proportional to the period of

performance. Payment for Core M&O Services includes Non-Key Deliverables, Reports, and Transition Deliverables, which are not tied to an Incremental Payment Sum.

- i. August 15, 2019 – August 14, 2020: \$889,125.00 per month
- ii. August 15, 2020 – August 14, 2021: \$914,289.39 per month

d. August 15, 2021 – August 14, 2022 (if elected by the State via an Amendment as mutually agreed by the Parties)

Core M&O Services during this period represent monthly installments of the amounts below. For partial months, payments shall be proportional to the period of performance. Payment for Core M&O Services includes Non-Key Deliverables, Reports, and Transition Deliverables, which are not tied to an Incremental Payment Sum.

- i. August 15, 2021 – December 31, 2021: \$914,289.39
- ii. January 1, 2022 – August 14, 2022: \$940,208.69

e. Upon State election by the process delineated in Section 8 of Attachment A the monthly payment due for Core M&O Services shall be reduced by the following amounts effective at the beginning of the next full calendar month after Contractor's shut down of the applicable Managed Application services in all environments.

- i. ECM Managed Application: \$25,156.25 shall be deducted per month
- ii. OBIEE Managed Application: \$25,156.25 shall be deducted per month
- iii. Upon the time both Managed Applications are shut down the monthly installment for the applicable period in 9.1.c. and/or 9.1.d. shall be reduced by \$50,132.50 per month.

## 9.2 Discretionary Services

Additional services not explicitly described in Attachment A, but which are approved by a Change Request as referenced in Sections 17 and 25 of Attachment A, include a Not to Exceed (NTE) amount for all such Discretionary Services of \$1,500,000.00 for State Fiscal Years (SFY) SFY19 and SFY22, an NTE amount for all such Discretionary Services of \$3,000,000.00 for SFY20 and an NTE amount for all such Discretionary Services of \$3,000,000.00 for SFY21. A complete schedule of Discretionary Service funds can be found in the table below in this Section 9.2. Regardless of the start/end date specified in the Change Request, Discretionary Services shall be funded by the Discretionary Services budget allocated for the SFY in which they were completed irrespective of when the work began. For work completed within a specific SFY, Contractor shall invoice and be paid based on the payment terms as set forth in the corresponding Change Request and as agreed to by the parties.

For work started, but not completed within an SFY, Contractor shall proceed with work into the next SFY until work is completed and provide an informational memorandum (attached hereto as Exhibit 6) to the State Authorized Representative no later than May 15<sup>th</sup> of the current SFY. Such work that spans two SFYs shall be invoiced and paid in

accordance with the payment terms as set forth in the Change Request and as agreed to by the parties.

Discretionary Services	Not to Exceed
August 15, 2018 – August 14, 2019	\$1,500,000.00
August 15, 2019 – June 30, 2020	\$3,000,000.00
July 1, 2020 – June 30, 2021	\$3,000,000.00
July 1, 2021 – June 30, 2022**	\$1,500,000.00
Total	\$9,000,000.00
July 1, 2022 – August 14, 2022 (if elected) *	\$1,500,000.00

\*Added to account for partial period of SFY, if August 15, 2021 – August 14, 2022 option year is elected by State.

\*\*Discretionary Funds for this SFY are available through the Contract end date of August 14, 2021. If State executes the August 15, 2021 – August 14, 2022 option year then the Discretionary Funds for this SFY will be available through June 30, 2022.

### 9.3 Key Deliverables

- a. Table A – Key Deliverables: (1) the Deliverable Identifier (“Del. #”) Number, (2) Key Deliverable Designation; (3) the Deliverable Name, (4) the DED Submission Timeframe; (5) the Deliverable Submission Timeframe and (6) Deliverable Update Frequency; (7) Deliverable Value; and (8) Incremental Payment Sum (based on Deliverable Update Frequency);

- All DEDs for Deliverables (Key and Non-Key) require Acceptance by the State.
- All updates to Key Deliverables and all initial updates to Non-Key Deliverables require Acceptance by the State.
- All Key Deliverables (as delineated in Table A, Column 2) require Acceptance and approval via electronic sign-off by the State and Contractor. Once the State and Contractor have approved the Deliverable via electronic sign-off, Contractor shall invoice, and State shall pay the Incremental Payment Sum set forth in Table A, Column 8.

**Table A: Key Deliverables (August 15, 2016 – August 14, 2018)**

Del. #	Key Del.	Deliverable Name	DED Submission Timeframe	Deliverable Submission Timeframe	Deliverable Update Frequency	Deliverable Value	Incremental Payment Sum (based on Update Deliverable Frequency)
1.K01	Yes	Project Management Plan	3 Weeks after Contract Effective Date	4 Weeks after DED Approval	annually	\$200,000.00	\$100,000.00
1.K02	Yes	Disaster Recovery Plan	3 Weeks after Contract Effective Date	4 Weeks after DED Approval	annually	\$200,000.00	\$100,000.00
1.K03	Yes	M&O Manual	3 Weeks after Contract Effective Date	4 Weeks after	quarterly	\$300,000.00	\$37,500.00

				DED Approval			
1.K04	Yes	M&O Schedule	3 weeks after Contract Effective Date	4 Weeks after DED Approval	monthly	\$300,000.00	\$12,500.00
1.K05	Yes	Architecture Document	6 weeks after Contract Effective Date	4 Weeks after DED Approval	every 6 months	\$300,000.00	\$75,000.00
1.K06	Yes	Availability Plan	6 weeks after Contract Effective Date	4 Weeks after DED Approval	quarterly	\$300,000.00	\$37,500.00
1.K07	Yes	Configuration Management Plan	9 weeks after Contract Effective Date	4 Weeks after DED Approval	quarterly	\$300,000.00	\$37,500.00
1.K08	Yes	SSP (State Security Plan)	16 weeks after Contract Effective Date	4 Weeks after DED Approval	quarterly	\$300,000.00	\$37,500.00

- b. Table A1 – Key Deliverables: (1) the Deliverable Identifier (“Del. #”) Number, (2) Key Deliverable Designation; (3) the Deliverable Name, (4) Deliverable Update Frequency; (5) Deliverable Value; and (6) Incremental Payment Sum (based on Deliverable Update Frequency).

**Table A1: Key Deliverables – (August 15, 2018 – August 14, 2019)**

Del. #	Key Del.	Deliverable Name	Deliverable Update Frequency	Estimated Deliverable Update Schedule	Deliverable Value	Incremental Payment Sum (based on Update Deliverable Frequency)
1.K01	Yes	Project Management Plan	annually	D-01.3 – 11/01/2018	\$100,000.00	\$100,000.00
1.K02	Yes	Disaster Recovery Plan	annually	D-02.3 – 11/01/2018	\$100,000.00	\$100,000.00
1.K03	Yes	M&O Manual	quarterly	D-03.9 – 10/01/2018 D-03.10 – 01/01/2019 D-03.11 – 04/01/2019 D-03.12 – 07/01/2019	\$150,000.00	\$37,500.00
1.K04	Yes	M&O Schedule	monthly	D-04.25 – 09/01/2018 D-04.26 – 10/01/2018 D-04.27 – 11/01/2018 D-04.28 – 12/01/2018 D-04.29 – 01/01/2019 D-04.30 – 02/01/2019 D-04.31 – 03/01/2019 D-04.32 – 04/01/2019 D-04.33 – 05/01/2019 D-04.34 – 06/01/2019 D-04.35 – 07/01/2019 D-04.36 – 08/01/2019	\$150,000.00	\$12,500.00
1.K05	Yes	Architecture Document	every 6 months	D-05.5 – 12/01/2018 D-05.6 – 06/01/2019	\$150,000.00	\$75,000.00

1.K06	Yes	Availability Plan	quarterly	D-06.9 – 10/01/2018 D-06.10 – 01/01/2019 D-06.11 – 04/01/2019 D-06.12 – 07/01/2019	\$150,000.00	\$37,500.00
1.K07	Yes	Configuration Management Plan	quarterly	D-07.9 – 10/01/2018 D-07.10 – 01/01/2019 D-07.11 – 04/01/2019 D-07.12 – 07/01/2019	\$150,000.00	\$37,500.00
1.K08	Yes	SSP (State Security Plan)	quarterly	D-08.9 – 11/01/2018 D-08.10 – 02/01/2019 D-08.11 – 05/01/2019 D-08.12 – 08/01/2019	\$150,000.00	\$37,500.00

- c. Table A2 – Key Deliverables: (1) the Deliverable Identifier (“Del. #”) Number, (2) Key Deliverable Designation; (3) the Deliverable Name, (4) Deliverable Update Frequency; (5) Deliverable Value; and (6) Incremental Payment Sum (based on Deliverable Update Frequency).

**Table A2: Key Deliverables – (August 15, 2019 – August 14, 2021)**

Del. #	Key Del.	Deliverable Name	Deliverable Update Frequency	Estimated Deliverable Update Schedule	Deliverable Value	Incremental Payment Sum (based on Deliverable Update Frequency)
1.K02	Yes	Disaster Recovery Plan	annually	D-02.04 – 11/01/2019 D-02.05 – 11/01/2020	\$200,000.00	\$100,000.00
1.K03	Yes	M&O Manual	every 6 months	D-03.13 – 10/01/2019 D-03.14 – 04/01/2020 D-03.15 – 10/01/2020 D-03.16 – 04/01/2021	\$480,000.00	\$120,000.00
1.K05	Yes	Architecture Document	every 6 months	D-05.07 – 12/01/2019 D-05.08 – 06/01/2020 D-05.09 – 12/01/2020 D-05.10 – 06/01/2021	\$480,000.00	\$120,000.00
1.K06	Yes	Availability Plan	annually	D-06.13 – 05/01/2020 D-06.14 – 05/01/2021	\$200,000.00	\$100,000.00
1.K07	Yes	Configuration Management Plan	annually	D-07.13 – 05/01/2020 D-07.14 – 05/01/2021	\$200,000.00	\$100,000.00
1.K08	Yes	SSP (State Security Plan)	quarterly	D-08.13 – 11/01/2019 D-08.14 – 02/01/2020 D-08.15 – 05/01/2020 D-08.16 – 08/01/2020 D-08.17 – 11/01/2020 D-08.18 – 02/01/2021	\$240,000.00	\$30,000.00

				D-08.19 – 05/01/2021 D-08.20 – 08/01/2021		
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- d. Table A3 – Key Deliverables: (1) the Deliverable Identifier (“Del. #”) Number, (2) Key Deliverable Designation; (3) the Deliverable Name, (4) Deliverable Update Frequency; (5) Deliverable Value; and (6) Incremental Payment Sum (based on Deliverable Update Frequency).

**Table A3: Key Deliverables – (August 15, 2021 – August 14, 2022) (if elected)**

Del. #	Key Del.	Deliverable Name	Deliverable Update Frequency	Estimated Deliverable Update Schedule	Deliverable Value	Incremental Payment Sum (based on Deliverable Update Frequency)
1.K02	Yes	Disaster Recovery Plan	annually	D-02.06 – 11/01/2021	\$100,000.00	\$100,000.00
1.K03	Yes	M&O Manual	every 6 months	D-03.17 – 10/01/2021 D-03.18 – 04/01/2022	\$240,000.00	\$120,000.00
1.K05	Yes	Architecture Document	every 6 months	D-05.11 – 12/01/2021 D-05.12 – 06/01/2022	\$240,000.00	\$120,000.00
1.K06	Yes	Availability Plan	annually	D-06.15 – 05/01/2022	\$100,000.00	\$100,000.00
1.K07	Yes	Configuration Management Plan	annually	D-07.15 – 05/01/2022	\$100,000.00	\$100,000.00
1.K08	Yes	SSP (State Security Plan)	quarterly	D-08.21 – 11/01/2021 D-08.22 – 02/01/2022 D-08.23 – 05/01/2022 D-08.24 – 08/01/2022	\$120,000.00	\$30,000.00

- e. It is understood and agreed that:

- Where applicable, the content of all Deliverables delineated in Table A, Table A1, Table A2, and Table A3 of this Attachment B shall be based upon and therefore substantially similar to the versions of the Deliverables previously delivered to State by Contractor.
- All timelines set forth in Table A of this Attachment B are dependent on Contractor and State adhering to Attachment A, Sections 13, 14 and 15: DED Review and Approval Process, DED Revision Process, and Deliverables Review and Approval Process.
- Notwithstanding the DED Submission Timeframe set forth in Attachment B, Table A above, in the event the Contractor has already drafted a DED that the State has accepted for a specific Deliverable, Contractor will present the existing DED to State in accordance with Attachment A, Section 12 Existing Deliverables/DED Catalog Review within 2 weeks of Contract

execution. Upon the State's Acceptance of the existing DED, the timeframe set forth in the Deliverable Submission Timeframe shall commence.

- If the first submission of a monthly or quarterly Deliverable does not align with start of a calendar month or quarter, Contractor shall align the subsequent deliveries with the first of the calendar month or quarterly respectively.
- In the event a DED is not accepted by the State in the timelines in the above Table A of this Attachment B, due to a State Delay, the value associated with the associated Deliverable any outstanding incremental payments tied to the Deliverable will be paid upon Acceptance of the Deliverable in the subsequent payment.
- In the event a DED is not accepted by the State in the timelines in the above Table A of this Attachment B, due to reasons other than a State Delay, the value associated with the associated Deliverable such incremental payments will be redistributed among the remaining Incremental Payment Sums.
- Attachment B, Table A1 Key Deliverables shall continue the existing schedule as set forth in Table A of this Attachment B which are estimated dates and may be updated as agreed upon via the M&O Schedule.
- Attachment B, Table A2 Key Deliverables establishes a new Update Frequency and Update Schedule. Table A3 Key Deliverables shall continue the schedule set forth in Table A2 of this Attachment B which are estimated dates and may be updated as mutually agreed upon by the Parties.

#### 9.4 Premium Processing Development Time and Materials

- a. Contractor shall provide dedicated and part-time resources as needed to provide the services during the period of performance as described in Attachment A, Section 26 Premium Processing Development.
- b. Contractor shall invoice on a time and materials basis against the previously executed CR-046 until \$150,000.00 is expended.
- c. Upon expiration of the \$150,000.00 funding from CR-046, CR-046 shall expire. Contractor shall then continue to perform in accordance to Amendment No. 4, whereupon, Contractor shall begin invoicing on a time and materials basis, up to a maximum of \$915,000.00 or until August 14, 2021, whichever occurs first, in accordance with Amendment No. 4, Attachment A, Section 26 and Attachment B, Rate Card in Table 9.4 Premium Processing Rate Card below.
- d. Invoices shall reference Attachment A, Section 26 Premium Processing and include service dates, description, rate, and hours worked.
- e. Contractor shall retain full discretion over the assignment of its staff in the execution of work requested under Attachment A, Section 26 Premium Processing.
- f. Contractor shall provide services based on the Role Descriptions listed in Table 9.4. Resources may perform tasks including but not limited to those listed in the Role Description column.
- g. Contractor shall provide hourly support at the rates listed in Table 9.4.

**Table 9.4 Premium Processing Rate Card**

<b>Billing Role</b>	<b>Role Description</b>	<b>CY20 Hourly Rate</b>	<b>CY21 Hourly Rate</b>
Analyst Level 3	<ul style="list-style-type: none"> <li>• Provides technical writing and analysis for project deliverables; and</li> <li>• Assists in the production and organization of work products.</li> </ul>	\$122	\$126
Analyst Level 4	<ul style="list-style-type: none"> <li>• Participates in the identification and analysis of functional and technical requirements; and</li> <li>• Produces detailed software design specifications and related artifacts for developers.</li> </ul>	\$150	\$155
Analyst Level 5	<ul style="list-style-type: none"> <li>• Provides leadership and guidance to functional and technical resources regarding project deliverables and work products; and</li> <li>• Consults on the design of business and system architecture.</li> </ul>	\$190	\$196
Design Development Engineer Level 2	<ul style="list-style-type: none"> <li>• Performs basic development for software solutions.</li> </ul>	\$137	\$141
Design Development Engineer Level 3	<ul style="list-style-type: none"> <li>• Performs development for software solutions; and</li> <li>• Consults on technical designs according to industry standards and best practices.</li> </ul>	\$183	\$188
Design Development Engineer Level 4	<ul style="list-style-type: none"> <li>• Applies principles of software engineering to lead the development of software solutions; and</li> <li>• Provides oversight of software coding standards and practices.</li> </ul>	\$211	\$217
Design Development Engineer Level 6	<ul style="list-style-type: none"> <li>• Directs development team and provides leadership and guidance to functional and technical resources regarding project deliverables and work product; and</li> <li>• Provides strategic direction and oversight on the design of business and system architecture.</li> </ul>	\$272	\$280
Senior Program Administration Specialist	<ul style="list-style-type: none"> <li>• Provides project management support.</li> </ul>	\$143	147
Project Manager	<ul style="list-style-type: none"> <li>• Applies programmatic oversight and ensures project management principles are leveraged throughout; and</li> </ul>	\$245	\$252



	<ul style="list-style-type: none"><li>• Manages project scope, schedule, and budget through CR lifecycle.</li></ul>		
Senior Comp Security Systems Specialist	<ul style="list-style-type: none"><li>• Applies security principles to inform the design and development of software solutions; and</li><li>• Provides oversight of software coding standards and practices.</li></ul>	\$190	\$196
Quality Assurance Specialist	<ul style="list-style-type: none"><li>• Participates in the identification and analysis of functional and technical requirements; and</li><li>• Assists in the execution of test cases.</li></ul>	\$122	\$126
Quality Assurance Manager	<ul style="list-style-type: none"><li>• Provides overall direction for quality management; and</li><li>• Assists in the planning and execution of test cases.</li></ul>	\$150	\$155

- IV. **Attachment E, Business Associate Agreement.** Attachment E is hereby deleted in its entirety and replaced by the Attachment E attached to this Amendment.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

SOV Cybersecurity Standard 19-01. All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01 and Cybersecurity Standard 19-01 Update dated February 19, 2019, which Contractor acknowledges has been provided to it, and is available on-line at the following URL: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

This document consists of 25 pages. Except as modified by this Amendment No. 4, all provisions of the Contract remain in full force and effect.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment No. 4 to the Contract.

**STATE OF VERMONT  
DEPARTMENT OF VERMONT HEALTH ACCESS**

**CONTRACTOR  
OPTUMINSIGHT, INC.**

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Cory Gustafson, Commissioner      Date  
NOB 1 South  
280 State Drive  
Waterbury, VT 05671-1010  
Phone: 802-241-0246  
Email: [Cory.Gustafson@vermont.gov](mailto:Cory.Gustafson@vermont.gov)

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Paul M. Miller, Vice President Finance      Date  
Optum Corporate Finance  
11000 Optum Circle  
Eden Prairie, MN 55344  
Phone: 952-205-6089  
Email: [paul.m.miller@optum.com](mailto:paul.m.miller@optum.com)

## Exhibit 1: Quality Assurance Surveillance Plan (QASP) for Amendment 4, Section 26 Premium Processing Development

### INTRODUCTION

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This Quality Assurance Surveillance Plan (QASP) has been developed to evaluate Contractor actions while implementing the Statement of Objectives. It is designed to provide an effective method of monitoring Contractor performance for each listed objective on the Performance Requirements Matrix. It also provides a systematic method to evaluate the services the Contractor is required to furnish.

### STANDARD

The Contractor is responsible for management and quality control actions to meet the terms of the contract. The role of the Product Owner (PO) and Vermont Product Team is quality assurance to ensure contract standards are achieved.

The Contractor shall perform all work required in a satisfactory manner in accordance with the requirements of the contract. The Contractor shall notify the Product Owner for appropriate action if it is likely that the Contractor will not achieve successful final delivery of the software code in accordance with the performance objectives and acceptable quality levels (AQLs) identified below.

### PERFORMANCE REQUIREMENTS MATRIX

The Vermont Product Team will evaluate the performance objectives reflected below by reviews and acceptance of work products and services. As indicated, the Vermont Product Team will assess progress towards the final delivered software code. Note that the performance requirements listed below are required for the final deliverables. However, the incremental delivery of code will be assessed by the Vermont Product Team to ensure that the Contractor is on a path to successful final delivery.

Contractor Deliverable	Contractor Performance Standards(s)	Contractor Acceptable Quality Level	State Method of Assessment
Tested Code	Code delivered under the contract must have substantial test code coverage and a clean code base.	Minimum of 90% test coverage of all code.	Combination of manual testing and automated testing.
Properly Styled Code	<a href="#">GSA 18F Front End Guide</a> for any Portal work as well as BPEL best practice in code styling for SOA and proprietary Siebel coding language.	0 linting errors and 0 warnings for any Portal work as well as Adherence to BPEL and Siebel code best practices.	Combination of manual review and automated testing.

Accessible	Web Content Accessibility Guidelines 2.1 AA (WCAG 2.1 AA) standards for any Portal work.	0 errors reported for WCAG 2.1 AA standards using an automated scanner and 0 errors reported in manual testing for any Portal work.	SoV will perform 508 compliance testing on modified Portal and Siebel pages to verify no negative impact to accessibility as a result of this work.
Deployed	Code must successfully build and deploy into testing environment(s) and must be compatible with data schemas used in production. If data schemas are not available, code must successfully build and deploy into production environment.	Successful build and deployment with deployment completion notification.	Manual review of deployment requests and combination of manual and automated testing.
Documentation	All dependencies are listed, and the licenses are documented. Major functionality in the software/source code is documented.	Individual methods are documented inline using comments that permit the use of tools such as JsDoc. System diagram is provided.	Combination of manual review and automated testing, if available.
Security Compliant	OWASP Application Security Verification Standard 3.0 and meet the requirements of an application in a CMS MARS-E compliant environment.	Code submitted must be free of medium- and high-level static and dynamic security vulnerabilities in accordance with the remediation plan as allowed under CMS MARS-E.	Manual review of application scan results by the State security team. State to document false positives and provide risk evaluation inclusive of all risk waivers to reach acceptable level of risk. Code scan remediations to be tracked in either the POAM or the Threat and Vulnerability Management (TVM) report.
User Research and Design Artifacts	Initial and subsequent user workflow design activities must be conducted and reviewed at regular intervals throughout the development process (not just at the beginning or end) to ensure the user needs are well understood and that the design solution works well for users.	Vendor shall work with the State to establish a user workflow design creation and review timeline for the project and add those to the project plan.	Participation and manual review of workflow designs.

## PROCEDURES

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Delivery of all software assets will occur by pull request from the Contractor's repository to the appropriate Vermont repository. If inspection results are satisfactory, the pull request will be merged; otherwise, deficiencies will be noted in the pull request or through issues as described below. The Vermont Product Team and PO may find the delivery satisfactory even though further work is required.

The Vermont Product Team will review the related functionality to ensure compliance with acceptance criteria and requirements of the user stories. All clarifications and changes to the user stories that are agreed upon are documented in the issue tracker. Incomplete or inadequate code and user stories will be noted in a mutually agreed-upon issue tracker with links to each issue shared with the PO. The Contractor may respond in that tracker as appropriate, addressing the accuracy and validity of the defect as well as any planned corrective action (if not already noted). The issue tracker will be updated as revised acceptance criteria are added to the incomplete backlog items as part of the backlog grooming process. The Contractor's team will discuss and document actions to prevent recurrence.

At the conclusion of the period of performance, the Vermont Product Team will follow a similar procedure to document discrepancies and to assess overall performance.

## ACCEPTANCE OF SERVICES

The Product Owner shall review all work products for compliance with performance standards described in Attachment A, Section 26 and monitoring procedures described in this QASP. The PO shall not accept work products for the contract until all defects have been corrected.

ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT

**SOV CONTRACTOR:** OptumInsight, Inc.

**SOV CONTRACT NO.** 31750    **CONTRACT EFFECTIVE DATE:** August 15, 2016

THIS BUSINESS ASSOCIATE AGREEMENT (“AGREEMENT”) IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, OPERATING BY AND THROUGH ITS **DEPARTMENT OF VERMONT HEALTH ACCESS** (“COVERED ENTITY”) AND PARTY IDENTIFIED IN THIS AGREEMENT AS CONTRACTOR OR GRANTEE ABOVE (“BUSINESS ASSOCIATE”). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT OR GRANT (“CONTRACT OR GRANT”) TO WHICH IT IS ATTACHED.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

**The parties agree as follows:**

**1. Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

“*Agent*” means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

“*Breach*” means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

“*Business Associate*” shall have the meaning given for “Business Associate” in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

“*Electronic PHI*” shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

“*Individual*” includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“*Protected Health Information*” (“*PHI*”) shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

“*Required by Law*” means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity’s *Electronic PHI*.

## **2. Contact Information for Privacy and Security Officers and Reports.**

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity’s HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: [AHS.PrivacyAndSecurity@vermont.gov](mailto:AHS.PrivacyAndSecurity@vermont.gov)

**3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

**4. Business Activities.** *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

**5. Electronic PHI Security Rule Obligations.**

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;

b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;



- e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and
- f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents*. *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

**6. Reporting and Documenting Breaches.**

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

**7. Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall

draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

**8. Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

**9. Agreements with Subcontractors.** *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

**10. Access to PHI.** *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. **Amendment of PHI.** *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. **Accounting of Disclosures.** *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, *Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. *Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Business Associate* is in compliance with this Agreement.

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

15. **Return/Destruction of PHI.**

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30)

days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

16. **Penalties.** *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. **Training.** *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. **Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a "*Business Associate*" of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual's PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the

HITECH Act. *Reports* or data containing *PHI* may not be sold without Covered Entity's or the affected Individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

Rev. 05/22/2020